

APPEAL NO. 022691  
FILED DECEMBER 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 17, 2002. The hearing officer determined that the appellant (claimant) had the ability to work during the qualifying period for the second quarter of supplemental income benefits (SIBs), and, as he had not made a search for any employment, was not entitled to SIBs. The claimant has appealed this determination, pointing to the limitation placed on him by his treating doctor; the respondent (carrier) responds that the decision is correctly based upon the record.

DECISION

We affirm the hearing officer's decision.

We note that citations to Appeals Panel decisions that precede 1999 represent law in effect prior to the rules of the Texas Workers Compensation Commission that became effective that year. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130102(d) Rule 130.102(d) effective during the qualifying period for the claimant's second quarter of SIBs provide that the requirement for a good faith search for employment may be met if the employee can show that he:

- (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work

In this case, the hearing officer's determination that the claimant had the ability to work throughout the period is supported by the evidence. The functional capacity examination shows an inconsistent effort and even then evaluates the claimant as having the ability to work. Likewise, the treating doctor released the claimant to work with restrictions. The claimant had not sought work during the qualifying period even within those restrictions. Whether the claimant had no ability at all in the earlier part of the qualifying period or realistically could have worked within the terms of his April 2002 restrictions was a matter of fact to be determined by the hearing officer. In any case, we would note that the failure to search for work within the restrictions rendered within the last part of the period would be enough to bar entitlement to SIBs, which is based on quarterly, not weekly, analysis.

As the decision and order of the hearing officer are not against the great weight and preponderance of the evidence, we affirm.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Veronica Lopez  
Appeals Judge

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Robert W. Potts  
Appeals Judge